

Confidential for MembersRoss vs. Philip Morris, Inc.

The entire day Thursday was spent in reading two depositions by Dr. Kenneth Devine, Mayo Clinic surgeon who operated on John Ross's cancer in February 1952. Court was recessed until Monday morning, June 25, when reading of the depositions will continue. (The court is hearing criminal cases on Fridays.)

At the opening of Thursday's session, the judge, in a session at the bench, denied defense counsel's motion to strike from the record the testimony given Wednesday by Dr. John Knight in regard to causation of Ross's cancer.

Dr. Devine gave two depositions -- on March 15, 1959, and on September 9, 1960.

In the first deposition, Dr. Devine was asked a lengthy hypothetical question by plaintiff's attorney Lyman Field that purported to describe Ross's background and history and sought the surgeon's opinion as to what caused the cancer.

Hardy objected to the question but was overruled by the judge who said he would permit the doctor's answer to be read even though the hypothetical question contained inaccuracies, errors of fact and omissions of pertinent data.

Dr. Devine's answer was to the effect that with reasonable medical probability he believed Ross's cancer was directly caused by the smoking of Philip Morris cigarettes.

In cross examination, Devine said he could not at the time recall any scientific material prior to 1952 that connected smoking with larynx cancer. But in redirect examination he said his memory was refreshed and that he could recall published findings about such a connection.

Dr. Devine's second deposition was taken a week after the plaintiff's was taken. Questioned by defense counsel, the doctor said nobody knows whether the pyriform fossa have any function in breathing and that he considered them to be part of the larynx. He said the only function known was in regard to swallowing food and drink.

He said that on a scientific basis he did not know the cause or causes of cancer of the pyriform fossa. He said he based his opinion on his own clinical observations involving over 1800 larynx cancer cases at Mayo, 100 of which were of the pyriform fossa.

He said he believed tobacco smoke was a prime factor in cancer of the pyriform fossa but that perhaps another agent -- alcohol -- could be involved as a co-carcinogen. A person has a greater risk when he both smokes and drinks, he said.

In redirect examination during the second deposition, the hypothetical question was again asked, this time including part of Ross's history of drinking. The judge permitted the answer to be read. Dr. Devine said his opinion about the cause of Ross's cancer had not changed since his first deposition.

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Dr. Devine insisted Ross's cancer could be called larynx cancer. Regardless of what term is used, he said, Ross's cancer occurred in a site that could be "expected" to be filled with swirls and eddies of smoke-laden air. He also said smoke particles could reach the pyriform fossa in saliva.

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